
No. 22-13051-HH

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

IN RE: BLUE CROSS BLUE SHIELD ANTITRUST LITIGATION (MDL 2406)

**On Appeal from the United States District Court for the
Northern District of Alabama, Southern Division,
No. 2:13-CV-20000-RDP**

**APPELLANTS TOPOGRAPHIC, INC. AND EMPLOYEE SERVICES,
INC.'S UNOPPOSED MOTION FOR EXTENSION OF TIME**

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No. 22-13051-HH

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to 11TH CIR. R. 26.1 and 11TH CIR. R. 26.1-1(b), Appellants hereby certify that the list of those interested in the outcome of this appeal in Appellants' Brief is complete.

Corporate Disclosure. Pursuant to FED. R. APP. P. 26.1 and 11TH CIR. R. 26.1-1, 26.1-2, and 26.1-3, Appellants submit this Corporate Disclosure Statement and state as follows:

1. Appellant Topographic, Inc. has no parent corporation and no publicly held corporation owns ten percent or more of its stock.
2. Appellant Employee Services, Inc. has no parent corporation and no publicly held corporation owns ten percent or more of its stock.

**APPELLANTS EMPLOYEE SERVICES, INC. AND TOPOGRAPHIC INC.’S
UNOPPOSED MOTION FOR AN EXTENSION OF TIME**

Objectors-Appellants Employee Services, Inc. and Topographic Inc. (Self-Funded Subclass Objectors) submit this unopposed motion for a 21-day extension of the time to file Appellants’ reply briefs to March 24, 2023.

I. Relevant Background

On October 5, 2022, Plaintiffs-Appellees (the Fully Insured Subclass) moved to consolidate and expedite the pending appeals, Nos. 22-13051, 22-13052, 22-13118, and 22-13120. Objectors and Defendants-Appellees (BCBS) opposed an expedited briefing schedule for various reasons, including the importance and complexity of the issues presented and the need for due consideration of those issues by the parties and the Court. *See, e.g.*, Appellants’ Opposition to Motion to Consolidate and to Expedite Appeals (Oct. 12, 2022). BCBS also argued that neither the Fully Insured Subclass nor other class members would be prejudiced, pointing out that “the central class-wide relief—elimination of the Blues’ National Best Efforts Rule—has already been implemented.” Def.-Appellees’ Resp. to Pls.-Appellees’ Mot. to Consolidate and to Expedite Appeals at 5. The Court’s order granting in part and denying in part the Fully Insured Subclass’s motion resulted in a December 12, 2022 deadline for Objectors’ opening briefs. Order at 1 (Nov. 2, 2022). No Objector requested an extension, and all timely filed and served their opening briefs on December 12. Docs. 120–124.

On December 21, 2022, BCBS moved for a 30-day extension of the time to file Appellees’ responsive briefs to February 10, 2023. BCBS argued that good cause existed for the requested extension because “these Appeals address important issues that are significant to the Settlement and to the peace Defendants obtained in the Settlement,” the District Court “‘carefully consider[ed]’ the Settlement and the objections to [it] for more than a year,” additional time would allow BCBS to “give these important issues the careful consideration they deserve,” and additional time would allow for coordination among Defendants-Appellees and among all Settlement proponents, “especially in light of the upcoming holiday season.” Doc. 135 at 5–6 (quoting R-2931-45). Additionally, BCBS argued an extension would not prejudice “any of the parties to this appeal” and stated that none opposed BCBS’s request. *Id.* at 6.

The Fully Insured Subclass filed a response to BCBS’s motion in which it suggested a “more modest 14-day extension” but did not oppose the 30-day extension and argued it should receive the benefit of any extension granted to BCBS. Doc. 136 at 66. Objector-Appellant David Behenna opposed the motion as to his appeal. Doc. 138 at 4.

The Court entered an order granting an extension of time to and including February 10, 2023, in which to file BCBS’s brief. The same day, it entered a

corrected order, granting an extension to all Appellees. Doc. 141. Appellees timely filed their briefs on February 10th. Docs. 146, 147.

Pursuant to the Court's orders and rules, Objectors' reply briefs are currently due on March 3, 2023. Because a briefing schedule was established by court order, Self-Funded Subclass Objectors hereby file a written motion for a 21-day extension of the reply brief filing deadline for all Objectors-Appellants to March 24, 2023. *See* 11th Cir. R. 31-2. Self-Funded Subclass Objectors have conferred with counsel for the Fully Insured Subclass and BCBS, as well as Objector Behenna and counsel for Objectors-Appellants Home Depot U.S.A., Inc. *et al.* and for Jennifer Cochran and Aaron Craker. *See id.*; 11th Cir. R. 26-1. No party opposes the requested 21-day extension.

II. Argument

A first written request for an extension of time to file a brief must demonstrate "good cause." 11th Cir. R. 31-2. Good cause exists here for a 21-day extension of Objectors-Appellants' deadline for filing their reply briefs.

First, unlike Appellees, Objectors did not request an extension of time in which to file their opening briefs and timely filed them by the Court-ordered deadline. But as BCBS explained in its motion for an extension, these appeals raise important, complex issues related to a momentous settlement, the District Court considered the Settlement and objections to it for more than a year, and additional

time would allow Objectors to give these issues the consideration they deserve. Indeed, Objectors must reply to two response briefs presenting arguments advanced by both the Fully Insured Subclass and BCBS, and additional time would allow Objectors to give the issues addressed in both briefs due attention.

Second, lead appellate counsel for Self-Funded Subclass Objectors is currently participating in a jury trial that was rescheduled to the week Appellees' response briefs were due. Counsel expects the trial to last at least two weeks and will be unable to appropriately review and respond to the arguments raised in Appellees' briefs without an extension of the reply brief deadline.

Finally, an extension will not prejudice any party for the reasons advanced by BCBS in its response to the Fully Insured Subclass's Motion to Expedite. And no party objects to a 21-day extension of the filing deadline for Appellants' reply briefs.

For these reasons, Objectors Topographic, Inc. and Employee Services, Inc. respectfully ask the Court to extend the time in which to file reply briefs for all Objectors-Appellants to March 24, 2023.

Dated: February 13, 2023

Respectfully submitted,

/s/ Scott Burnett Smith
Scott Burnett Smith

*Counsel for Appellants Topographic,
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CERTIFICATE OF COMPLIANCE

This document complies with the word limit of FED. R. APP. P. 27(d)(2) because, excluding the parts of the document exempted by FED. R. APP. P. 32(f), this document contains 845 words.

This document complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type-style requirements of FED. R. APP. P. 32(a)(6).

Dated: February 13, 2023

Respectfully submitted,

/s/ Scott Burnett Smith
Scott Burnett Smith

Of Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on February 13th, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. Counsel for all parties are registered CM/ECF users and will be served with the foregoing document by the Court's CM/ECF System.

Dated: February 13, 2023

Respectfully submitted,

/s/ Scott Burnett Smith
Scott Burnett Smith

Of Counsel for Appellants